



**STATE OF NEW JERSEY**

In the Matters of John Whitley,  
Correctional Police Officer (S9988U),  
Statewide

**FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION**

CSC Docket No. 2019-1999

List Removal Appeal

**ISSUED: JUNE 14, 2019 (SLK)**

John Whitley appeals his removal from the eligible list for Correctional Police Officer (S9988U), Statewide on the basis that he possessed an unsatisfactory criminal background.

The appellant took the open competitive examination for Correctional Police Officer (S9988U), which had an August 31, 2016 closing date, achieved a passing score, and was ranked on the subsequent eligible list. In seeking his removal, the appointing authority indicated that the appellant had an unsatisfactory criminal background. Specifically, in 1992, he was charged as a 16-year old with a third-degree offense, 2C:39-9E, Manufacture, Transport, Disposition and Defacement of Weapons and Dangerous Instruments and Appliances. The charge was disposed through a successful diversion program.

On appeal, the appellant indicates that this incident took place 27 years ago while he was 16 and attending high school. He presents that a classmate brought a weapon to school and he made the mistake of storing it in his locker for a class period. The appellant states that all charges against him in this matter were dismissed via a diversionary program. Additionally, he asserts that he learned from that mistake and has not been accused or been found guilty of any crime as an adult.

In response, the appointing authority presents its criteria for removal which includes juvenile offenses for crimes of the fourth degree or higher. Additionally, it

states that the appellant knew that his friend was bringing the gun to school to sell to another student, which meant that he not only used poor judgment by agreeing to store a weapon in his locker, he was aware that the weapon was to be sold to another student, which potentially put himself and other students and faculty at risk. Therefore, the appointing authority argues that the appellant may not be a suitable candidate for the subject title.

## CONCLUSION

*N.J.S.A.* 11A:4-11 and *N.J.A.C.* 4A:4-4.7(a)4 provide that an eligible's name may be removed from an eligible list when an eligible has a criminal record which includes a conviction for a crime which adversely relates to the employment sought. The following factors may be considered in such determination:

- a. Nature and seriousness of the crime;
- b. Circumstances under which the crime occurred;
- c. Date of the crime and age of the eligible when the crime was committed;
- d. Whether the crime was an isolated event; and
- e. Evidence of rehabilitation.

The presentation to an appointing authority of a pardon or expungement shall prohibit an appointing authority from rejecting an eligible based on such criminal conviction, except for law enforcement, correction officer, juvenile detention officer, firefighter or judiciary titles and other titles as the Chairperson of the Civil Service Commission (Commission) or designee may determine. It is noted that the Appellate Division of the Superior Court remanded the matter of a candidate's removal from a Police Officer eligible list to consider whether the candidate's arrest adversely related to the employment sought based on the criteria enumerated in *N.J.S.A.* 11A:4-11. *See Tharpe v. City of Newark Police Department*, 261 *N.J. Super.* 401 (App. Div. 1992). Further, in *In the Matter of J.B.*, 386 *N.J. Super.* 512 (App. Div. 2006), the Appellate Division remanded a list removal appeal for further consideration of the impact of the appellant's expunged arrest on his suitability for a position as a Police Officer. Noting that the former Merit System Board relied heavily on the lack of evidence of rehabilitation since the time of arrest, the Appellate Division found that "[t]he equivalent of 'evidence of rehabilitation' is supplied in these circumstances by the foundation for an expungement. *See N.J.S.A.* 2C:52-3 and *N.J.S.A.* 2C:52-8.

Additionally, it is well established that municipal police departments may maintain records pertaining to juvenile arrests, provided that they are available only to other law enforcement and related agencies, because such records are necessary to the proper and effective functioning of a police department. *Dugan v. Police Department, City of Camden*, 112 *N.J. Super.* 482 (App. Div. 1970), *cert. denied*, 58 *N.J.* 436 (1971). Thus, the appellant's juvenile arrest records were properly disclosed to the appointing authority when requested for purposes of making a hiring decision.

Further, participation in a diversionary program is neither a conviction nor an acquittal. See *N.J.S.A. 2C:43-13(d)*. See also *Grill and Walsh v. City of Newark Police Department*, Docket No. A-6224-98T3 (App. Div. January 30, 2001); *In the Matter of Christopher J. Ritoch* (MSB, decided July 27, 1993). In *Grill, supra*, the Appellate Division indicated that the diversionary program provides a channel to resolve a criminal charge without the risk of conviction; however, it has not been construed to constitute a favorable termination. Furthermore, while an arrest is not an admission of guilt, it may warrant removal of an eligible's name where the arrest adversely relates to the employment sought. Thus, the appellant's arrest and entry into a diversionary program could still be properly considered in removing his name from the subject eligible list. Compare *In the Matter of Harold Cohrs* (MSB, decided May 5, 2004) (Removal of an eligible's name reversed due to length of time that had elapsed since his completion of his diversionary program).

*N.J.A.C. 4A:4-6.3(b)*, in conjunction with *N.J.A.C. 4A:4-4.7(d)*, provides that the appellant has the burden of proof to show by a preponderance of the evidence that an appointing authority's decision to remove his or her name from an eligible list was in error

Initially, although the appointing authority argues that the appellant violated its criteria for removal, the Commission notes that it was not bound by criteria utilized by the appointing authority and must decide each list removal on the basis of the record presented. See *In the Matter of Debra Dygon* (MSB, decided May 23, 2000).

In the instant matter, while the Commission is cognizant of the high standards for the subject title, as enunciated in *Moorestown v. Armstrong*, 89 *N.J. Super.* 560, 566 (App. Div. 1965), *cert. denied*, 47 *N.J.* 80 (1966) and *In re Phillips*, 117 *N.J.* 567 (1990), a review of the record indicates that the appointing authority did not have a valid reason to remove the appellant's name from list. Specifically, while the appellant was involved in a serious incident, this incident occurred 27 years ago while he was a minor in high school and was deemed appropriate for a diversionary program. Moreover, this was an isolated incident as there has been no evidence presented that he had any other negative interactions with the law. Finally, a review of his employment application indicates ample rehabilitation as the appellant earned his Bachelor's degree and has been employed throughout most of his adult life.

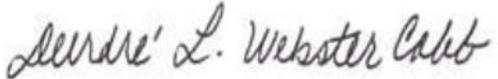
Accordingly, the appellant has met his burden of proof in this matter and the appointing authority has not shown sufficient cause for removing his name from the Correctional Police Officer (S9988U), Statewide eligible list.

**ORDER**

Therefore, it is ordered that this appeal be granted, and John Whitley's name be restored to the (S9988U) eligible list, for prospective employment opportunities only.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 12<sup>th</sup> DAY OF JUNE, 2019



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